

**PART 46—EMPLOYEE GRIEVANCES**

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**AUTHORITY:** The provisions of this Part 46 issued under sec. 161 R.S.; 5 U.S.C. 22; sec. 2 Reorg. Plan No. 2 of 1950, 64 Stat. 1261.

**SOURCE:** The provisions of this Part 46 contained in Order No. 304-63, 28 F.R. 9638, Aug. 31, 1963; Order 327-64, 29 F.R. 15918, Nov. 28, 1964, unless otherwise noted.

**§ 46.1 Definitions.**

(a) The term "grievance", as used in this part, means an employee's expressed feeling of dissatisfaction with aspects of his working conditions or relationships with other employees or his supervisor which are beyond his control and not covered by other appeal procedures.

(b) The term "complaint", as used in this part, means an employee's expressed feeling of dissatisfaction with aspects of his working conditions or relationships which is presented, usually not in writing, to his immediate supervisor for resolution prior to filing a grievance.

**§ 46.2 Policy.**

It is the policy of the Department of Justice to administer a personnel program that promotes good employee-management relationships. Effective administration requires that employees be given ample opportunity to obtain consideration of their expressions of dissatisfaction with matters, subject to management control, that affect them personally. Whenever possible, this opportunity should be presented in the normal day-to-day relationships between employees and their immediate supervisors. The procedures prescribed in this part are primarily designed to provide for proper consideration and resolution of grievances that cannot be rectified at lower administrative levels. Grievance matters shall be handled as expeditiously as possible. An employee, his representative, and other persons involved in grievance matters shall be free from restraint, interference, discrimination, coercion, or reprisal in connection with, or because of, the presentation of a complaint or grievance.

**§ 46.3 Matters excluded.**

The provisions of this part are inapplicable to matters which are not considered "grievances" or "complaints" as defined in § 46.1, or are covered by other appeal procedures, such as those relating to classification, reduction in force, performance rating, fair employment practices (Executive Order No. 10590 and Part 42 of this chapter), security requirements for Government employment (Executive Order No. 10450), and those under Part 22 (separations, suspensions, and demotions) of the Civil Service Regulations (5 CFR Part 22).

**§ 46.4 Employees covered.**

This part shall apply to employees in the competitive service, including probationary and temporary employees. The use of these procedures to resolve grievances of employees in the excepted service shall be encouraged.

**§ 46.5 Implementation.**

(a) The head of each office, division, bureau, and board shall administer the procedures covering employees under his jurisdiction. He, or subordinates designated by him, shall (1) issue such implementing instructions as may be appropriate to insure that employees' complaints and grievances are given proper consideration, (2) provide advice and assistance to supervisors and employees on procedures, (3) designate persons to hear and report on personal presentations, and (4) make final decisions on grievances, except in cases in which the final decision is to be made by the Deputy Attorney General under § 46.6 (d). For the purpose of this part, the Offices of the United States Attorneys and United States Marshals shall be considered as organizational subdivisions of the Office of the Deputy Attorney General.

(b) All supervisors shall consider complaints and grievances of subordinates; and are urged to work out, informally, whenever possible, final solutions.

(c) The Assistant Attorney General for Administration shall have overall responsibility for the administration of the procedures prescribed in this part and shall provide advice and assistance to supervisory officials.

**§ 46.6 Presentation of grievance.**

(a) Grievances shall be filed by employees.

(b) The employee may designate any person as his representative at any step of the proceedings under this part.

(c) An employee and his representative, if any, shall be allowed a reasonable amount of official time to present his grievance in person or otherwise. Any such personal presentation shall be made at the first level of supervision above the level of the supervisor with whom the employee shall have discussed his complaint. Such presentation shall be made before an individual or group designated for this purpose pursuant to §§ 46.5(a) (3) and 46.7(c).

(d) Grievances shall be presented for resolution to no more than two levels above the supervisor with whom the employee shall have discussed his complaint. Final decisions (second level) shall be made by an official higher than the one making the first level decision. If necessary to achieve this, final decisions shall be made by the Deputy Attorney General.

(e) An employee organization which has been granted exclusive recognition under Part 44 of this chapter shall be afforded an opportunity to have someone present at discussions between employees and management during grievance proceedings, but affording such an opportunity shall in no way impair the right of an employee to handle his own grievance and to choose his own representative for that purpose.

**§ 46.7 Procedures.**

(a) An employee filing a grievance shall state his name, title, grade, organization (division, section, unit, etc.), in which he is employed and the name of his immediate supervisor. He shall also set forth in precise terms exactly what his grievance is, all facts relating thereto, including the names of any individuals against whom the complaint is made, the reason for his dissatisfaction, and the corrective action desired, and whether he desires to make a personal presentation of his grievance. The grievance shall be dated, signed, and presented to the official at the first level above his immediate supervisor.

(b) Officials who receive written grievances shall assure that all facts pertaining to the grievance are presented in writing for the record, and, if requested,

arrange for the official named in § 45.5 (a) to designate an individual or group to whom a personal presentation should be made. If a personal presentation is not requested at the first level, the employee shall forfeit his right to such a presentation in connection with any request he might make for consideration at the higher and final decision level.

(c) An individual or group designated to hear a personal presentation shall be selected in a manner that will assure a fair objective review. That individual or group shall prescribe the manner in which the personal presentation is to be conducted, including any arrangements for the appearance of witnesses and for the preparation of a transcript or summary. Employees of the Department who are made available as witnesses shall be considered to be in a duty status when appearing at such a presentation if they would otherwise be in duty status at the time.

(d) Whenever possible, the individual or group shall be designated and render an advisory report to the official who is to make the decision on the grievance within 30 calendar days after an employee requests a personal presentation. The report shall consist of findings or findings and recommendations, and copies shall be given to the employee, his representative, and any employee organization having exclusive recognition under Part 44 of this chapter.

(e) After all facts, including any report of personal presentation, are available, a written decision shall be given the employee which shall include a statement of the basis for the decision.

(f) If an employee is dissatisfied with the first level decision, he may, within ten working days after receipt thereof, present the grievance in writing to the head of the office, division, bureau, or board, as provided in instructions issued pursuant to § 46.6, stating the reasons for his dissatisfaction with the initial decision and the corrective action desired.

(g) So far as practicable, within fifteen working days, the reviewing official at the second level shall consider all recorded facts, findings, and recommendations and give the employee a written decision, which shall be final, and which shall include a statement of the basis for the decision.

(h) For each grievance, a file will be established. It shall contain as a mini-

mum: The written grievance; the individual or group's report of a personal presentation as well as its findings or findings and recommendations (if a personal presentation shall have been requested by the employee involved); documentary evidence considered in resolving the grievance; and the written decision or decisions.

**§ 46.8 Publication.**

This order shall be published in the FEDERAL REGISTER and copies thereof distributed to all employees subject to this part and to all employee organizations recognized by this Department pursuant to Part 44 of this chapter.